

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Henrik E. Hedlund

Confirmation No.: 3703

Application No.: 10/633,357

Group No.: 3623

Filed: 08/01/2003

Examiner: Justin Pats

For: SYSTEM AND METHOD FOR DYNAMIC SCHEDULING OF PERSONNEL

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Commissioner for Patents  
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Alexandria, VA 22313-1450**

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In response to the final Office action dated June 25, 2010, the Applicant requests review of the Final Rejection in the above-identified application. No amendments are being filed with this request. A Notice of Appeal under 37 C.F.R. § 41.31(a)(1) is being filed herewith. The review is requested for the reasons provided in the following remarks.

## REMARKS

Claims 1, 3-22, and 25-34 are pending in the application. Claims 1, 3-22, and 25-34 currently stand rejected. The Applicant respectfully requests consideration of the following remarks and allowance of the claims.

### Claim Rejections under 35 U.S.C. § 103(a)

Claims 1, 3-12, 15-16, and 18-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,587,831 to O'Brien in view of *Variable Neighborhood Search for Nurse Rostering Problems* by Burke, *Nurse Rostering at the Hospital Authority of Hong Kong* by Chun, and *Fitness Evaluation for Nurse Scheduling Problems* by Burke (hereinafter referred to as Burke 2). The present rejection mischaracterizes at least one of the prior art references, and thus represents clear error.

Specifically, the present rejection erroneously equates handling *general* shift related tasks of Burke 2 with handling *specific* tasks, as recited by claim 1. Regardless, Burke 2 fails to recognize patterns of general tasks from past schedules, much less recognize specific tasks, as provided by claim 1. The Applicant therefore respectfully disagrees with the rejection, as discussed in more detail below, and appropriate review is requested.

Claim 1 provides creating a workforce schedule based on historical shift patterns recognized by processing past schedules. One of the historical shift patterns recognized by the scheduling server is a time dependent shift pattern based on when a specific task needs to be performed. In other words, the scheduling server recognizes a pattern in past schedules that indicates that a specific task needs to be performed at a certain time and then creates a workforce schedule accordingly.

The final Office action dated 6/25/2010 acknowledges that O'Brien, Burke, and Chun all fail to disclose recognizing a historical time dependent shift pattern based on when a specific task needs to be performed, as recited by claim 1. However, Burke 2 also fails to disclose this limitation. Rather, Burke 2 merely discloses scheduling workers to various shifts and only implicitly provides that these shifts are scheduled based on general shift related tasks. Burke 2 does not explicitly or implicitly teach generating a schedule based on when a *specific* task needs to be performed. Furthermore, even if the general shift related tasks could be considered a

specific task, Burke 2 does not recognize the general shift related tasks from historical patterns from past schedules, as provided by claim 1.

In particular, Burke 2 provides that each worker could be assigned to the morning, late, or night shift (see Burke 2, Table 1). Table 2 then displays to which of these shifts, if any, five people, P1-P5, were assigned during the current planning period as well as during a previous planning period. Similarly, Table 3 displays a time unit representation of Table 2, which displays time units when each of the people, P1-P5, were scheduled. The final Office action asserts that the people scheduled in Tables 2 and 3 are scheduled for when shift related tasks need to be performed by people P1-P5 (see final Office action, page 6). However, general shift related tasks do not equate to when a *specific* task needs to be performed. Additionally, while Burke 2 may display a previous planning period, Burke 2 does not mention anything about recognizing a pattern in the previous planning period that would equate to a historical shift pattern regardless of whether that shift pattern is based on when a specific task needs to be performed.

For at least the above reasons, the final Office action's assertion that Burke 2 discloses historical time dependent shift pattern based on when a specific task needs to be performed is incorrect and, thus, represents clear error.

In view of the discussion above, the Applicant submits that O'Brien, Burke, Chun, and Burke 2, alone or in combination, all fail to teach or suggest all of the limitations of claim 1. Claim 1 is therefore allowable over the art of record.

Independent claim 21 contains limitations similar to those of claim 1 and is therefore allowable over the art of record for at least the same reasons as claim 1. The Applicant refrains from a discussion of the remaining dependent claims in view of their dependence from otherwise allowable independent claims.

## CONCLUSION

Based on the above remarks, the Applicant submits that the claims in their present form are allowable over the art of record. The Applicant further submits that there are numerous additional reasons in support of patentability, but that such reasons are moot in light of the above remarks and are omitted in the interests of brevity. No estoppel is intended and no estoppel should apply to assertions in the recent Office Action that are not refuted herein.

Included herewith is the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith, and the fee under 37 C.F.R. § 1.17(a)(1) for a one-month extension of time. The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine that additional fees are necessary, the Office is hereby requested to contact the undersigned to arrange for payment of the applicable fees.

Respectfully submitted,

/Brian L. Arment/

### **SIGNATURE OF PRACTITIONER**

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